

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

KENNETH CUNNINGHAM,

Plaintiff,

-against-

9:06-CV-0272  
(LEK/GJD)

DEPARTMENT OF CORRECTIONAL  
SERVICES, *et al*

Defendants.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on September 10, 2007 by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 47). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned.

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. "A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* No objections have been raised in the allotted time with respect to Judge DiBianco's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation (Dkt. No. 47) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

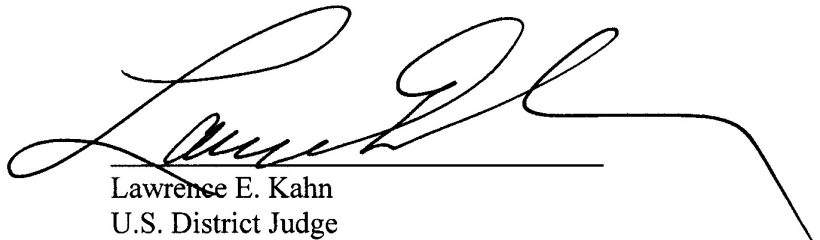
**ORDERED**, that Defendants' Motions to dismiss (Dkt Nos. 20 and 40) are **GRANTED**, and the Complaint (Dkt. No. 1) **DISMISSED IN ITS ENTIRETY**; and it is further

**ORDERED**, that Plaintiff's Appeal of Judge DiBianco's decision denying Plaintiff's Motion for reconsideration concerning appointment of counsel (Dkt. No. 26), now mooted, is also **DISMISSED**; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 26, 2007  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge